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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 198 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

KANTILAL SHANKERBHAI AMIN

Versus

UNION OF INDIA

Appearance:

MS MAYA DESAI for Petitioner
MR UI VYAS for Respondent No. 1 & 2
MR ALKESH PATEL FOR MRRA PATEL for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/07/2000

ORAL JUDGEMENT

#. The petitioner by this petition prayed for direction
to the respondent Nos. 1 and 2 to immediately reconnect

his telephone No.361793. Second prayer has been made for the direction to respondent Nos. 1 and 2 to reconnect the telephone No.361793 without demanding from the petitioner any reconnection charges or any other amount for restoring the aid connection. Third prayer has been made for direction to the respondents Nos. 1 & 2 to give the petitioner proportionate reduction, adjustment or refund of the rent for the period for which the rent was already paid in advance and the said disconnection was made. Fourth prayer is made for direction to the respondent Nos. 1 and 2 to give refund or adjust the amount of rent paid after the telephone was disconnected on 22.4.1998. Prayer has also been made for grant of interim relief.

#. This court after giving notice to the respondents admitted the matter on 17.3.1989 and interim relief in terms of para 17(B) has also been granted.

#. The facts of the case are that the telephone No.361793 is in the name of the petitioner. This telephone was disconnected on 27.4.88 by the respondent Nos. 1 and 2 as per the petitioner's case without notice and opportunity of hearing to him. It is the case of the petitioner that he had never made default in payment of any of the telephone bills raised for this telephone by the respondent Nos. 1 and 2. The petitioner states that even after this disconnection the petitioner has continued to pay rental charges for the telephone. The petitioner averred in para 5 of the Special Civil Application that the disconnection of the telephone No.361793 appears to have been made due to nonpayment of bill of Telephone No. 332970. This telephone stands in the name of Sakun Aids, a Partnership firm of which the son of the petitioner, respondent No.3 herein was the partner. The petitioner states that the said firm landed into financial difficulties and was closed in April, 1997. He further submitted that so far as his knowledge goes the said firm is not doing any business since April, 1987 and its premises has been sealed by the Bombay Merchandise Bank. What is stated is that he is not connected with the partnership firm and telephone No.332970. So as per the say of the petitioner disconnection of his personal telephone on nonpayment of bill of telephone No.332970 is wholly illegal and arbitrary.

#. The respondent Nos. 1 and 2 filed reply to the Special Civil Application. Looking to the dispute which arises in this matter for consideration of this court, the court on 28.3.2000 ordered for the impleadment of the

son of the petitioner in the petition as respondent No.3. The respondent No.3 has also filed reply to the Special Civil Application. In the reply to the Special Civil Application it is given out by the respondent No.3 that the telephone No.332970 was in the name of M/s. Sakun Aids, a partnership firm in which he was a partner. He admits his relation with the petitioner as his father. It is also admitted that the dues of telephone 332970 amounting to Rs.11,094.80 was not paid. A notice was given by the respondent Nos. 1 and 2 to respondent No.3 in which it is mentioned that in case this amount is not paid telephone connection of the petitioner will be disconnected. The respondent No.3 given out that one partner of the firm Mr.Vinod Desai was using the telephone in dispute at his residence 23, Mahendrakunj Society, Opp. Central Bank of India, Khokhara-Mahemdabad Branch, Ahmedabad with an extension No.104 with the permission of the respondent Nos. 1 and 2. After dissolution of the firm all the dues has to be paid by the said partner Vinod Desai. It is stated that the respondent Nos. 1 and 2 have not taken any steps in matter against Vinod Desai or his son Prasant Vinod Desai. It is said that he has filed an Insolvency Petition. The respondent Nos. 1 and 2 in the reply has come up with the case that the telephone No.332970 has been disconnected after giving notice to the respondent No.3. The opportunity was given to the respondent No.3 that he may make payment of 50% of the dues and this telephone shall be restored. But that opportunity was also not availed of. It is the case of the respondent Nos. 1 and 2 that the respondent No.3 is residing with the petitioner and using the telephone No.332970.

#. The learned counsel for the petitioner contended that the action of the respondent-authorities to disconnect the telephone No.332970 without notice to the petitioner is wholly unjustified and arbitrary. In support of her this contention, the learned counsel for the petitioner has made reference to sections 421, 422 and 443 of the Indian Telegraphs Act, 1951. It has next been contended that the petitioner was not a partner of the firm in whose name the telephone stood and for nonpayment of the bill of that telephone the petitioner's telephone could not have been disconnected. Lastly it is contended that the petitioner has paid the rental charges of the telephone after disconnection and as a result of which he is entitled for the refund of this amount.

#. The learned counsel for the respondent Nos. 1 and 2 has supported the action of the respondent Nos. 1 and 2. The learned counsel for the respondent No.3 naturally is

not opposing this petition.

#. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

#. The learned counsel for the petitioner has failed to make out a case that the respondent No.3 was neither residing with the petitioner nor using the telephone No.332970 during the relevant time. The petitioner has not filed rejoinder to the reply filed by the respondent Nos. 1 and 2. The respondent Nos. 1 and 2 along with the reply annexed copy of notice which was sent to the respondent No.3 and from this I find that it has been sent to him at the address "A/3, Vrajbhumi Flat, Near Jaihind High School, Maninagar, Ahmedabad-8. The petitioner is residing at the aforesaid address. It is not in dispute that the notice has been received by the respondent No.3. From this document it is clear that the respondent No.3 was residing with the petitioner. In the reply to the affidavit filed by the respondent No.3 he has not come with the case that he was not residing with the petitioner nor using the telephone No.331793.

#. From the Annexure-F on the record of the Special Civil Application, a notice, which has been given to the petitioner dated 10.5.1988 by the respondent Nos. 1 and 2 I find that it is mentioned therein that from the field staff report it is found that the respondent No.3 is residing with the petitioner and using the telephone No.361793 for the personal interest. At Annexure-G on the record dated 17.10.1988 of the letter of the petitioner to the Area Manager (E), Ahmedabad Telephone District. In this letter, the petitioner has not disputed the fact the respondent No.3 is residing with him and using his telephone No.361793. So, there is ample evidence on the record that the respondent No.3 was residing with the petitioner and using the telephone No.361793 for his personal interest and work. The respondent No.3 has not produced on the record of the Special Civil Application the dissolution deed of the firm. The telephone No.332970 was in the name of the firm and the partners are liable to pay the outstanding dues of the same. Whether this telephone was used by the respondent No.3 or not but it stood in the name of the firm. The respondent No.3 being a partner of the firm is liable to make the payment of the bill. Even if it is taken that Vinod Desai was using that telephone, it is hardly material, relevant and of any value for the department. Even after dissolution of the firm the respondent No.3 is not divested of his liability to pay the amount of the outstanding bill of the telephone to

the Department. The respondent No.3 though stated in the reply to the Special Civil Application that Vinod Desai was using the telephone with the permission of respondent Nos. 1 and 2 but in support of his this plea he has failed to produce any evidence. Only on the basis of his this bald statement, it is too difficult to accept that Vinod Desai was using the telephone No.332970 with the permission of the department.

##. It is true that the notice was not given to the petitioner before disconnecting the telephone No.361793 but only on this ground no relief can be granted to the petitioner by this court under its extraordinary equitable jurisdiction. In every case non-giving of the notice may not itself be a ground to quash and set aside the action of the respondent No. 1 & 2 unless the litigant has made out a case what prejudice is caused to him. The notice has to be given to the litigant so that he may have opportunities to give his defence but the defence which is to be given by the petitioner and which is given here is not tenable and acceptable as the respondent No.3 was residing with the petitioner and making use of the telephone No.332970 for his personal use and work. For nonpayment of the bill of the telephone No.332970 the respondent Nos. 1 and 2 were perfectly justified to disconnect the telephone of the petitioner. It is nothing but only a device designed by the petitioner not to pay dues of the telephone bills of telephone No.361793. The petitioner and respondent No.3 being father and son appear to have entered into an understanding to frustrated the very demand of the department of the charges of the telephone No.332970. This court will not grant any relief to such persons who make attempts not to pay the telephone charges to the department. In the facts of this case, I am satisfied that non-giving of the notice to the petitioner in the matter by the respondent Nos. 1 and 2 has not caused any prejudice to him.

##. As a result of the aforesaid discussion this petition fails and the same is dismissed. Rule is discharged. Interim relief, if any, granted stands vacated. However, in case the petitioner deposits the outstanding bills of the telephone No. 332970 within a period 10 days from the date of the receipt of the writ of this order the telephone No.361793 may not be disconnected for these dues. The petitioner is directed to pay Rs.1,000/= towards costs of the petition to the respondent Nos. 1 and 2.

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